

OPEN MEETING ITEM

5/14/09

ORIGINAL

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR



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ARIZONA CORPORATION COMMISSION

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission
DOCKETED

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

MAY - 1 2009

DATE: April 24, 2009

DOCKETED BY *[Signature]*

RE: Proposed Order and Consent Regarding Donald Robert Mattson (a/k/a Rob Mattson), Docket No. S-20649A-09-0013

CC: Michael P. Kearns, Interim Executive Director

Please find attached a proposed Order to Cease and Desist, For Restitution, For Administrative Penalty, and Consent to Same ("Order") regarding Donald Robert Mattson ("Mattson"). Respondents Knuckleball Capital Management, LLC and Jeffrie Harper are not a part of this Order.

The Order contains findings that from April 2007 to February 2008 Mattson and others sold to investors residing in Arizona \$199,000.00 in securities to raise funds for foreign exchange trading. All of the investor funds were deposited into an account in the name of Knuckleball Capital Management, LLC. Mattson used some of the investor funds to repay an investor and withdraw a portion of the investor funds in cash.

Mattson neither admits nor denies the findings of fact and conclusions of law. Mattson has agreed to cease and desist from violating the Arizona Securities Act, to pay restitution in the amount of \$179,000.00, and to pay an administrative fine in the amount of \$25,000.00.

The Division recommends this Order is appropriate, in the public interest, and necessary for the protection of investors.

Originator: Aikaterine Vervilos

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 In the matter of)

9 JEFFRIE HARPER (CRD #2863910)(a/k/a)
10 Jeff Harper) and KATHLEEN JANICE)
11 HARPER, husband and wife)

12 DONALD ROBERT MATTSON JR (a/k/a)
13 Rob Mattson), an unmarried man)

14 KNUCKLEBALL CAPITAL)
15 MANAGEMENT, LLC, an Arizona limited)
16 liability company)

17 Respondents.)
18)
19)
20)
21)
22)
23)

DOCKET NO. S-20649A-09-0013

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
CONSENT TO SAME BY:
DONALD ROBERT MATTSON (a/k/a
Rob Mattson)**

Respondent Donald Robert Mattson (a/k/a Rob Mattson) ("Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Jeffrie Harper (CRD #2863910)(a/k/a Jeff Harper) ("Harper") is an individual who at all relevant times resided in Maricopa County, Arizona.

3. DONALD ROBERT MATTSON, JR (a/k/a Rob Mattson) ("MATTSON") is an individual who at all relevant times resided in Maricopa County, Arizona.

4. MATTSON is an unmarried man.

5. KNUCKLEBALL CAPITAL MANAGEMENT, LLC ("Knuckleball") is an Arizona limited liability company organized on or about May 15, 2007. According to Commission records, Harper and MATTSON are members of Knuckleball.

6. According to Commission records, Knuckleball's primary purpose is currency investing.

7. MATTSON may be referred to as "Respondent."

8. Beginning in or around April 2007 until in or around February 2008, MATTSON, Harper and Knuckleball offered and sold securities in the form of investment contracts and/or commodity investment contracts ("Investment(s)"). MATTSON, Harper, and Knuckleball sold at least \$199,000 of the Investments to at least six investors who at all relevant times resided in Arizona. The investors received \$20,000; therefore, \$179,000 is owed to the investors.

9. MATTSON, Harper and Knuckleball represented to the investors that the funds would be used to trade in the foreign currency exchange market. MATTSON and Knuckleball represented to at least one investor that MATTSON and Knuckleball would be trading in the Euro/dollar market.

10. Knuckleball received the investor funds and pooled the funds in a bank account opened by MATTSON and controlled by MATTSON.

11. At least one investor was told MATTSON would conduct the trading. In another instance, Harper told at least one investor that a "friend" would do the trading. Upon information and belief, that "friend" is MATTSON.

1 12. MATTSON and Knuckleball promised positive returns to the investors solely from
2 the efforts of MATTSON and Knuckleball. At least one investor was promised returns of three (3)
3 percent a month. However, none of the returns materialized.

4 13. MATTSON and Knuckleball represented to the investors that their funds would be
5 used for the Investments. None of the investors gave MATTSON or Knuckleball authorization to
6 use their funds for any purpose other than investing in the Investments.

7 14. MATTSON and Knuckleball failed to tell investors they used their funds to repay
8 other investors and withdraw the funds from the Knuckleball bank account in cash.

9 15. MATTSON did not disclose to at least one investor any risks, including but not
10 limited to, that the investor may lose all or a large portion of the investment.

11 16. MATTSON failed to disclose material information regarding Harper, to wit:

12 a. that on or about December 23, 2004, Harper and Kathleen Janice Harper filed for
13 protection under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court,
14 District of Arizona in the matter entitled *In re Harper*, case no. 2:04-bk-22104-GBN. On May 20,
15 2005, Harper and Kathleen Janice Harper received a bankruptcy discharge.

16 b. that Harper was a registered salesman who resigned from his position during an
17 internal investigation for alleged misconduct. Harper was a registered salesman with World Group
18 Securities, Inc. ("WGS") from April 12, 2002 until August 27, 2004. WGS reported on the Central
19 Registration Depository ("CRD") of the Financial Industry Regulatory Authority, Inc. ("FINRA")
20 that Harper "was permitted to resign while under internal review for failure to repay debts owed to
21 customer of the firm, possible sharing of commissions with a representative of another firm, and a
22 possible unapproved outside business activity."

23 17. At all times relevant, MATTSON was not registered with the Commission as a
24 dealer or salesman.

25 18. At all times relevant, the Investments were not registered with the Commission.
26

II.**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondent violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts. Respondent's conduct included:

- a. Failed to disclose to at least one investor the risks associated with their investment including, but not limited to, the possibility that he/she may lose all or a large portion of their investment;
- b. Failed to provide material information to at least one investor regarding Harper that on or about December 23, 2004, Harper and Kathleen Janice Harper filed for protection under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona in the matter entitled *In re Harper*, case no. 2:04-bk-22104-GBN. On May 20, 2005, Harper and Kathleen Janice Harper received a bankruptcy discharge;
- c. Failed to provide material information to at least one investor regarding Harper that Harper was a registered salesman who resigned his position during an internal investigation for alleged misconduct. Harper was a registered salesman with World Group Securities, Inc. ("WGS") from April 12, 2002 until August 27, 2004. WGS reported on the Central Registration Depository ("CRD") of the

1 Financial Industry Regulatory Authority, Inc. ("FINRA") that Harper resigned
 2 for borrowing money from a WGS customer and did not pay it back, possibly
 3 referred business to another firm and shared commissions with a representative
 4 from that firm, and possibly participated in an unauthorized outside business
 5 activity;

- 6 d. Misrepresented to at least one investor the investment returns by promising a
 7 return of three (3) percent per month when no returns materialized; and
 8 e. Misrepresented to investors that the funds they invested would be used in their
 9 entirety for the Investments when the Respondent used their investor funds to
 10 repay an investor and withdraw the funds as cash.

11 6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S.
 12 § 44-2032.

13 7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
 14 2032.

15 8. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-
 16 2036.

17 **III.**

18 **ORDER**

19 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's
 20 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
 21 that the following relief is appropriate, in the public interest, and necessary for the protection of
 22 investors:

23 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
 24 agents, employees, successors and assigns, permanently cease and desist from violating the
 25 Securities Act.
 26

1 IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry
2 of Order.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that Respondent, individually,
4 shall, jointly and severally with any other Respondent against whom the Commission enters an
5 order under Docket No. S-20649A-09-0013, pay restitution to the Commission in the amount of
6 \$179,000.00. Payment shall be made in full on the date of this Order. Any amount outstanding
7 shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full.
8 Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account
9 controlled by the Commission. The Commission shall disburse the funds on a pro-rata basis to
10 investors shown on the records of the Commission. Any restitution funds that the Commission
11 cannot disburse because an investor refuses to accept such payment shall be disbursed on a pro-
12 rata basis to the remaining investors shown on the records of the Commission. Any funds that the
13 Commission determines it is unable to or cannot feasibly disburse shall be transferred to the
14 general fund of the state of Arizona.

15 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent MATTSON,
16 individually, shall pay an administrative penalty in the amount of \$25,000.00. Payment shall be
17 made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10%
18 per annum from the date of this Order until paid in full. The payment obligations for these
19 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall
20 become immediately due and payable only after restitution payments have been paid in full or
21 upon Respondent's default with respect to Respondent's restitution obligations.

22 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
23 Respondent does not comply with this Order, any outstanding balance may be deemed in default
24 and shall be immediately due and payable.

25 ...

26 ...

IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(AV)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent MATTSON admits the jurisdiction of the Commission over the subject
3 matter of this proceeding. Respondent acknowledges that Respondent has been fully advised of
4 Respondent's right to a hearing to present evidence and call witnesses and Respondent knowingly
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. Respondent acknowledges that this Order To Cease and Desist, Order for
8 Restitution, Order for Administrative Penalties, and Consent to Same ("Order") constitutes a valid
9 final order of the Commission.

10 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondent acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondent acknowledges that Respondent has been represented by an attorney in
16 this matter, Respondent has reviewed this Order with Respondent's attorney, Julie M. Beauregard,
17 and understands all terms it contains.

18 5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law
19 contained in this Order. Respondent agrees that Respondent shall not contest the validity of the
20 Findings of Fact and Conclusions of Law contained in this Order in any present or future
21 administrative proceeding before the Commission.

22 6. By consenting to the entry of this Order, Respondent agrees not to take any action
23 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
24 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
25 factual basis. Respondent will undertake steps necessary to assure that all of Respondent's agents
26 and employees understand and comply with this agreement. Nothing in this paragraph shall

1 preclude Respondent from defending himself in any administrative, civil or criminal proceedings
2 to which the Commission is not a party.

3 7. While this Order settles this administrative matter between Respondent and the
4 Commission, Respondent understands that this Order does not preclude the Commission from
5 instituting other administrative or civil proceedings based on violations that are not addressed by
6 this Order.

7 8. Respondent understands that this Order does not preclude the Commission from
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
9 that may be related to the matters addressed by this Order.

10 9. Respondent understands that this Order does not preclude any other agency or
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
12 proceedings that may be related to matters addressed by this Order.

13 10. Respondent agrees that Respondent will not apply to the state of Arizona for
14 registration as a securities dealer or salesman or for licensure as an investment adviser or
15 investment adviser representative until such time as all restitution and penalties under this Order
16 are paid in full.

17 11. Respondent agrees that Respondent will not exercise any control over any entity
18 that offers or sells securities or provides investment advisory services within or from Arizona until
19 such time as all restitution and penalties under this Order are paid in full.

20 12. Respondent agrees that Respondent will not sell any securities in or from Arizona
21 without being properly registered in Arizona as a dealer or salesman, or exempt from such
22 registration; Respondent will not sell any securities in or from Arizona unless the securities are
23 registered in Arizona or exempt from registration; and Respondent will not transact business in
24 Arizona as an investment adviser or an investment adviser representative unless properly licensed
25 in Arizona or exempt from licensure.
26

1 13. Respondent agrees that Respondent will continue to cooperate with the Securities
2 Division including, but not limited to, providing complete and accurate testimony at any hearing in
3 this matter and cooperating with the state of Arizona in any related investigation or any other
4 matters arising from the activities described in this Order.

5 14. Respondent consents to the entry of this Order and agrees to be fully bound by its
6 terms and conditions.

7 15. Respondent acknowledges and understands that if Respondent fails to comply with
8 the provisions of the order and this consent, the Commission may bring further legal proceedings
9 against Respondent, including application to the superior court for an order of contempt.

10 16. Respondent understands that default shall render Respondent liable to the
11 Commission for its costs of collection and interest at the maximum legal rate.

12 17. Respondent agrees and understands that if Respondent fails to make any payment as
13 required in the Order, any outstanding balance shall be in default and shall be immediately due and
14 payable without notice or demand. Respondent agrees and understands that acceptance of any
15 partial or late payment by the Commission is not a waiver of default by Commission.

16
17 

18 Donald Robert Mattson (a/k/a Rob Mattson)

19 STATE OF ARIZONA)
20 County of Maricopa) ss



21 SUBSCRIBED AND SWORN TO BEFORE me this 9th day of April, 2009.

22
23 

24 NOTARY PUBLIC

25 My commission expires:

26 1/14/2011